THE LAW OF BLOCKADE

BY

A. MAURICE LOW, M.A.

Author of "The American People, a Study in National Psychology;" "Great Britain and the War;" "The Freedom of the Seas," &c.

London:
Sir Joseph Causton & Sons, Limited.

1916.

THE LAW OF BLOCKADE

BY

A. MAURICE LOW, M.A.

Author of "The American People, a Study in National Psychology;" "Great Britain and the War;" "The Freedom of the Seas," &c.

London:
Sir Joseph Causton & Sons, Limited.

1916.

THE LAW OF BLOCKADE

The right of a nation at war to close the ports of its enemy so as to prevent him securing food or military supplies is as old as war itself. This is known as a blockade. It was practiced by the Greeks and the Romans. It is the complement on sea of operations on land. Cities and forts have always been blockaded by armies, the purpose being to prevent their inhabitants or garrisons from receiving assistance and to force their surrender through exhaustion. A sea blockade aims to accomplish the same purpose on a grander scale. It is directed not against a single fortress or city, but a whole people. There is a difference in degree, but no difference in effect. In a beleaguered fortress a few thousand, sometimes many thousand, persons suffer hunger, they die because they are deprived of drugs and other medical necessities. When an entire coast is under blockade the deaths and the misery are multiplied tenfold, a hundred-fold, a thousand-fold. This is one of the brutalities of war.

The land belongs to nations, each sovereign over its own, the sea belongs to all. National jurisdiction extends to one marine league, or three land miles, beyond the coast line, outside of that the heaving waters are common property; the high seas have been given over, by consent of mankind, to the free use of man, subject only to such restrictions as civilization and experience have proved to be for the general good.

In war nations close their barriers. It is a military measure, and he who ignores the warning does so at his peril. For an alien to attempt to enter belligerent territory is to run grave risk; he may suffer a long term of imprisonment, very often death; his goods can be confiscated. His intentions may be innocent, he may simply endeavour to cross from his own neutral country through that of the enemy to another neutral country, but his intent does not save him. Whenever he sets foot in the country at war he hazards his property, his liberty or his life.

To complete the isolation measures are taken to prevent intrusion from the sea. International law sanctions blockade and provides a penalty for its violation. When a port is blockaded and a neutral vessel attempts to enter, it may be seized and the vessel and cargo become "lawful prize," that is the property of the captor as the spoils of war. There is, it will be seen, no difference between the penalty on land or sea, only the law of the sea is more merciful. The adventurous spirit who scents a profit

in trying to pass through the enemy's lines to carry provisions to the beleaguered fortress puts his prospective profits against his life, the mariner may risk the loss of his ship and cargo, but his life is not forfeit. If a coast has not been blockaded neutrals may trade, provided their ships do not carry contraband, which may be roughly defined, for the present, as anything that can be used to carry on war. Contraband, whether found on the high seas or in enemy waters, if intended for the use of the enemy, can be captured and condemned as prize, but the noncontraband part of the cargo is immune from seizure.

To many persons this may seem unjust to the neutral, who is the victim of a quarrel in which he has no part. Admittedly this is true, and it is one of the misfortunes of war that, as Henry Clay wrote when he was Secretary of State: "The neutral is always seriously affected in the pursuit of his lawful commerce by a state of war between other powers;" yet we need not waste too much sympathy on the neutral. There has probably never been a war which has not added to the gains of neutrals. The Napoleonic wars enabled Americans to make great profits in the same way that the present war has enormously increased the wealth of the United States. Perhaps the most striking instance of war injuring a neutral was the American Civil War, which prostrated the English cotton industry, threw thousands of operatives out of work and forced them to starvation, because the Northern blockade of the Confederacy cut off supplies of raw cotton.

International law requires that a blockade to be recognized by neutrals must be physically effective, that is, it must not be a mere declaration of blockade, but the blockading nation must have enough ships to prevent ingress or egress from the enemy's ports. This requirement of an effective blockade in contradistinction from a "paper blockade" was the outcome of that long conflict between England and France in the early years of the last century. Napoleon did not have a navy powerful enough to blockade England and her colonial possessions, so he promulgated various decrees interdicting trade between neutrals and England; England retorted by Orders in Council, which interfered with American commerce and aroused bitter resentment in this country. The injustice was obvious, but it was not until 1856 that international law crystalized this sentiment into a principle. Following the Crimean War an international Congress was held in Paris, and it was there agreed that:

"Blockades, in order to be binding must be effective; that is to say,

maintained by forces really sufficient to prevent access to the coast of the enemy."

In the opening years of the last century, Lord Stowell, a great English jurist and Judge of the Court of Admiralty, delivered a momentous decision. Lord Stowell's legal eminence was recognized by that equally eminent American juriconsult Justice Story, who said of Stowell's judgments : " I have taken care that they shall form the basis of the maritime law of the United States, and I have no hesitation in saying that they ought to do so in that of every civilized country of the world." Great Britain and France being at war, the products of French colonies were loaded on American vessels which touched at American ports, thence the voyage was continued to France, by a legal fiction the cargo having become American property. This of course was simply an evasion of the established public law that enemy property was lawful prize. American merchants and shipowners enjoyed a tremendously profitable trade, England's enemies suffered so little from the war that an English writer bitterly complained " the produce of the eastern and western worlds sold cheaper in the markets of France and Holland than in our own," and England's naval supremacy was rendered impotent by a trick.

Lord Stowell's decision, which has had the most far reaching consequences in England and America, and revolutionized the English and American maritime code of war, was that when a vessel merely touched at an American port it was simply an incident in the voyage, that the voyage began when the cargo was originally loaded and ended only when the cargo was discharged at the place of sale, and that the voyage was to be held continuous from the port of departure to the port of arrival, even although there had been an intermediate call. This is known to lawyers as the doctrine of continuous voyage.

In 1861 the United States was at war and President Lincoln proclaimed a blockade of the Confederate ports. To circumvent the North, English merchants resorted to the same device which more than half a century earlier made Lord Stowell promulgate his historical doctrine of the continuous voyage.

Great Britain was a neutral. Under the law of nations her trade could not be interfered with, but if her ships attempted to enter a blockaded port they did so knowing they risked confiscation. There are in the West Indies, as every schoolboy knows, the British possessions of the Bahamas and the Bermuda islands, their geographical position bringing

them within a short sail of Wilmington, Charleston, and Savannah, the chief ports of the Confederacy. Now war or no war, contraband or no contraband, there was nothing to prevent a British ship, laden with whatever cargo her owners pleased, sailing out of a British port with clearance papers for a British port in the West Indies. They sailed, but American cruisers went out into the broad Atlantic, sometimes a thousand miles from the American coast, on the high seas over which the United States exercised no jurisdiction and had no legal authority, on the ocean that was the common pathway of man, and seized these ships and brought them into Northern ports as prize of war.

In the legal proceedings that followed the Supreme Court of the United States upheld the legality of the capture, basing its decision on the doctrine enunciated by Lord Stowell, but broadening and strengthening it to meet new conditions ; and to the English doctrine of the continuous voyage it added the American invention of " ultimate destination." It was a decision in accordance with the principles of equity, good morals and justice ; it was a decision the justice of which was subsequently recognized by the British Government.

In a few words what the Supreme Court decided was this. Nominally the goods in question are to be discharged at a British West Indian port, there to be sold as any other article of commerce may find a purchaser. But these places have small populations, they cannot legitimately absorb large quantities of goods, therefore it is evident they are not intended for consumption at their alleged destination, and, furthermore, the commodities are not such as the inhabitants need or can use. The cargoes consist, among other things, of large quantities of percussion caps, muskets, gunpowder, military boots, hardware, drugs and medical supplies ; articles urgently needed by the Confederacy, but for which there can be practically no demand in the West Indies. Applying the doctrine of continuous voyage and looking to the ultimate destination of the cargo, it becomes clear that the voyage is not from Liverpool to Nassau but from Liverpool to Charleston, with Nassau as an intermediate port of call ; there was no *bona fide* intention to sell the goods in Nassau, but their ultimate destination was Charleston or some other convenient port of the Confederacy. Nor was it material that the goods were discharged in the first port and from there transhipped in another vessel, or that, as it was claimed, the goods were to enter into the common stock of the country. The Court, displaying sound common sense and being

governed by precise considerations of justice, brushed aside these ingenious but dishonest legal technicalities and looked only to the ultimate destination. The ports of the Confederacy were under blockade and therefore any vessel trying to run the blockade risked seizure and condemnation. That no one disputed, but the novel point in these captures was: Could the United States send out its cruisers a thousand miles in the ocean and there legally seize a vessel on *suspicion*—because there was no actual proof, but only inference—of an attempt to enter a prohibited port?

The Supreme Court answered this question in the affirmative. There are three leading cases with which every international lawyer and the students of Anglo-American Civil War history are familiar. These decisions governed all subsequent captures, and they lay down the broad principle of American law that a blockade need not be "close" but can be carried on at long range. In the past it was held that for a blockade to be effective the blockading squadron must lie off the entrance of the port, just out of range of the guns of the forts; and it was believed to be impossible for a continuous close blockade to be maintained, as stress of weather and other circumstances would compel the blockaders to leave their stations or risk destruction, and once the vessels withdrew the blockade was raised. The Supreme Court gave much greater latitude. In effect it said a blockade can be carried on at the convenience of the blockader, close or far, as may best suit his purpose, the only requirement being that he shall make the blockade effective and prevent ships entering or leaving the port. In one case it may be more convenient to blockade close in, in another the blockading vessels may go out into the ocean 500 or 1,000 miles, there to lie in wait until neutral or belligerent comes in sight; but so long as the passage is controlled and the way is blocked it makes no difference where or how the blockading vessels are disposed.

There is no ambiguity about the language used by the supreme court. *The Springbok* sailed from London in 1862 for Nassau, and 150 miles off that port was captured by a Federal cruiser. In announcing the decision of the Court Chief Justice Chase said: "We do not now refer to the character of the cargo for the purpose of determining whether it was liable to condemnation as contraband, *but for the purpose of ascertaining its real destination; for we repeat, contraband or not, it could not be condemned if really destined for Nassau and not beyond; and, contraband or*

not, it must be condemned if destined to any rebel port, for all rebel ports were under blockade."

The Bermuda, ostensibly making for Bermuda, was captured near the British West Indian island of Abaco. As usual with vessels in the West Indian trade at that time she carried both contraband and noncontraband. The vessel and the entire cargo were condemned. In the head note of the decision of the Supreme Court this language is used :

" A voyage from a neutral to a belligerent port is one and the same voyage, whether the destination be ulterior or direct, and whether with or without the interposition of one or more intermediate ports ; and whether to be performed by one vessel or several employed in the same transaction and in the accomplishment of the same purpose."

" The ships," the Chief Justice said, " are planks of the same bridge, all of the same kind, and necessary for the convenient passage of persons and property from one end to the other."

The prize court proceedings arising out of the capture of *The Peterhoff,* a British vessel with a cargo of English merchandise, presented the consideration of ultimate destination from another point of view, which the Supreme Court also sustained. *The Peterhoff* was seized off St. Thomas, Danish West Indies, *en route* to the Mexican port of Matamoras, which, like the ports of the British West Indies, was a convenient *entrepôt* for the Confederacy. The Supreme Court held that as the Rio Grande was international waters its mouth could not be blockaded and neutral commerce was lawful, but again having regard to the ultimate destination of the contraband cargo, knowing that it was intended not for Mexican consumption but for sale to the Confederacy, it ordered the contraband, consisting of horseshoes, horseshoe nails, iron, steel, spades, quinine and other drugs, condemned, and freed the rest of the cargo.

In the proceedings arising out of *The Circassian* the Supreme Court ruled that " a vessel sailing from a neutral port with intent to violate a blockade is liable to capture and condemnation as prize from the time of sailing, though she intended to call at another neutral port not reached at the time of capture, before proceeding to her ulterior destination."

Before proceeding further it may be convenient briefly to summarise the rights of a belligerent as sanctioned by international law and exemplified by the decisions of the Supreme Court of the United States. They are :

A blockade is legal, but to be respected by neutrals it must be physically effective.

The manner in which the blockade shall be made physically effective is optional with the blockader. He may post his ships at the entrance of a port or place them a thousand miles off shore.

The penalty for attempting to violate a blockade is the condemnation of ship and cargo.

Absolute proof that a vessel contemplates running the blockade is not necessary. Presumption may be inferred.

Neutrals may trade with a belligerent, but at their own risk.

Contraband intended for the enemy is lawful prize wherever found and under any circumstances.

Noncontraband neutral goods to any enemy port not under blockade are free from seizure.

I shall now consider the course of England during the present war, whether she has violated international law or has done anything that the United States did not repeatedly do and its Court of last resort declare to be strictly legal and not in derogation of the rights of neutrals. England, I regret to say, has made two serious mistakes in the conduct of her naval operations, but both were the result of her desire to make the rigors of war less destructive to the trade of neutrals, and especially to that of the United States. Immediately following the declaration of war she ought—I insist now and have insisted from the beginning—to have declared a blockade of Germany, but out of mistaken kindness she refused to proclaim a blockade and accomplished the same purpose by Orders in Council. This was unfortunate because of the bad repute attaching to Orders in Council. To many Americans they recalled the first decade of the last century when England retaliated against Napoleon's Berlin and Milan Decrees with her Orders in Council, under the guise of which a great many harsh and illegal things were done, which finally led to the War of 1812. Many persons, not knowing the truth, believed the present Orders in Council were simply a subterfuge, that Great Britain proposed to do something that would not stand the light of day, that the abominable practice of the "paper blockade" was to be revived. Furthermore, the impression was created that England feared to venture into enemy waters and dare not risk her ships, and that while the commerce of neutrals would be harassed and subjected to unwarranted interference, and small nations would be bullied into submission, the trade of Germany would be little affected.

Why, then, did not England proclaim a blockade? Simple because a blockade would have brought incalculable injury and loss to America and all other neutrals. Had a blockade been in force from the fourth of August, 1914, England would have been strictly within her legal rights in taking into her ports every ship under any neutral flag—those of the United States as well as Italy, for instance, who at that time was a neutral and not a belligerent—and if there was the smallest quantity of contraband in the cargo the whole, contraband and non-contraband as well as the ship, would have been lawful prize. Had Great Britain applied the same rule of law that the United States did, had Great Britain held that the ultimate destination of the cargo was sufficient ground for condemnation, there could be no escape. The British Government had merely to follow the American precedents, which are all in favor of the belligerent and against the neutral; the Supreme Court having virtually reversed the good old principle of the English common law, that a defendant must be considered innocent until his guilt has been proved, by asserting that the guilt of the neutral ship may be presumed. "Presumption of an intent to run a blockade by a vessel bound apparently to a lawful port may be inferred from a combination of circumstances," the Supreme Court declared in the case of *The Cornelius*. And it showed again how well disposed it was to give every advantage to the belligerent and throw all risk and responsibility upon the neutral when it ruled in the case of *The Cheshire* that the approach of a vessel to the mouth of a blockaded port for inquiry—the blockade having been known—is itself a breach of the blockade, and subjects both vessel and cargo to condemnation. In the same case Mr. Justice Field delivered the dictum that "if approach for inquiry were permissible it will be readily seen that the greatest facilities would be afforded to elude the blockade."

Following this precedent the Supreme Court held in prize court proceedings arising out of the capture of the British steamer *Adula*, seized during the Spanish war for attempting to break the blockade of Guantanamo, that while no blockade had been proclaimed of that place by the United States, Guantanamo being east of the line established by the President's proclamation of the 27th of June, Admiral Sampson had blockaded the port and those in charge of the vessel had actual knowledge of the existence of the blockade, and that their sailing for the port was therefore unjustifiable, and properly subjected the vessel to condemnation.

By not declaring a blockade the British Government leaned backwards in its desire to be just and cause the minimum of inconvenience and loss to neutrals, and practically offered an inducement to contraband traffic. Blockade running like smuggling is profitable but risky business, because while big prices can always be obtained if a cargo is successfully landed, against the profits must be reckoned the condemnation of the vessel, which represents a considerable investment of capital. The British Government quixotically eliminated the risk and left only the profits. No blockade having been proclaimed neither the vessel nor the non-contraband part of the cargo could be condemned, only the contraband was forfeit. The arrangement was all on the side of the neutral, to the advantage of the enemy, and at the expense of England.

It was necessary, however, and a legitimate exercise of belligerent rights, to cut off Germany from receiving supplies, and measures were taken to prevent neutrals trading with Germany under the pretext they were trading with other neutrals. In a word, the British Government invoked the law of continuous voyage and ultimate destination, and it believed that a law promulgated and enforced by such a distinguished authority as the Supreme Court of the United States could be safely used. I should regret exceedingly if Americans were to hold to the contrary, nor do I believe that the great mass of the American people would want to declare unmoral, improper or unjust a law created by the Supreme Court and made effective when its application was for the benefit of the United States, and to treat it with contempt because its impartial application may cause some temporary inconvenience to American citizens.

The Orders in Council had the same effect as a blockade in closing the ports of Germany. The efficiency of that blockade does not need to be discussed. It has complied with the rule of international law that a blockade to be recognised by neutrals must be able "to prevent access to the coast of the enemy." The oversea trade of Germany has disappeared. Not a vessel enters or leaves a German port. Not a German merchant vessel can be found on any ocean. The German Navy is in hiding. Mr. J. R. Soley, the distinguished American historian of the naval operations of the Civil War, says "the absolute locking up of a well fortified port, whose trade offers powerful inducements to commercial enterprise, is an absolute impossibility." This was written of a time when there were no submarines, no aeroplanes, no great mine fields, no long range guns, no torpedoes, even although the intrepid Cushing won imperishable

renown by destroying the *Albemarle* with a spar torpedo. Yet the impossible has been made possible. History records no blockade where the hazards were so great, the strain so intense, the difficulties so many; never in all history has there been such perfect blockade as that which the British Navy has maintained day after day for eighteen months in the North Sea. Never has a great and powerful nation possessed of a formidable fleet struggled so desperately to break the coils which enmeshed her. The struggle has been vain. German ships of commerce lie rotting at their piers. German ships of war, fearing the issue of battle, skulk behind their defences.

To ascertain the ultimate destination of all cargoes carried in neutral ships Great Britain has done no more and no less than did the United States. Just as Federal cruisers were stationed from 500 to 1,000 miles at sea to intercept merchantships and inquire into their destination and the contents of their holds, so Great Britain has posted her cruisers at the gates of the North Sea. To distinguish between goods with an enemy destination and those of a neutral destination has been difficult. In the past, when ships were small and their cargo capacity limited, a vessel could be quickly searched and a decision speedily reached whether her freight was contraband or innocent, whether the goods she carried were for enemy or neutral use. Today the task is much more complicated. It is physically impossible for the ship to be searched at sea, she must be carried into port, there to be discharged, each bale and box and package carefully examined, for Germany, being in sore straits for certain commodities has attempted to smuggle them in innocent goods. This examination has taken time, in some instances caused loss to the shipper and the detention has been expensive to the shipowner, but these losses and inconveniences are inescapable in war. When contraband has been discovered it has been condemned and proceedings instituted in the prize court; goods whose ultimate destination is believed to be Germany and not a neutral port have been held to await judicial determination. Shippers and owners naturally object to losing prospective profits, and they complain British action is without warrant in law, but they forget that they have violated the law with full knowledge of its penalties, and that England, instead of exacting the full measure of the law, as did the United States, has displayed unparalleled leniency by yielding her rights and freeing ships that properly were liable to confiscation.

Great Britain has done what the United States did. She had been compelled to brush aside technicalities and evasion. The United States decided that when an English merchant sent percussion caps by the million and muskets by the thousand to an island whose people had no use for percussion caps or muskets, it was proof that ultimately they were to be sent elsewhere, and judge or jury who decided otherwise would have been stupid or corrupt. England has been placed in a much more difficult position and the decision has been reached on more complex evidence. Bermuda clearly had no need for millions of percussion caps, Denmark might have use for a great deal more cotton or American wheat this year than she needed last year or the year before. On the face of it this is a *bona fide* transaction between the United States and Denmark. Certain ports in countries bordering on Germany have a large trade in times of peace, railways, canals and intercostal commerce enable goods landed at one port to be sent quickly and cheaply to other countries. Modern commerce is an extremely complicated process. In the past a shipper consigned his wares to an agent, which made it easy to follow them into the hands of the consumer. Today cargoes are consigned " to order," that is, they are not consigned to a particular individual but can be sold at destination to any person. Thus a shipload of American wheat sent to Rotterdam is offered to the highest bidder, who may be a Dutch firm or an agent of the German Government, and if the latter he quickly forwards it to Germany. The problem, therefore, is for the British Government to determine how much wheat, cotton and other commodities are for the actual use and consumption of neutrals and how much goes to those neutrals simply in transit to Germany. In other words, is Germany, impotent on the sea, to nullify the impregnable British blockade by making use of a neutral as a blockade runner ?

The reader will recall the case of *The Peterhoff* whose contraband cargo to be landed at Matamoras was condemned. Matamoras is on all fours with Rotterdam. It was legitimate for English neutrals to sell contraband to Mexican neutrals provided it was a transaction in good faith, but it was not legitimate for an Englishman to carry contraband into Mexico knowing that it would be rushed across the border into the hands of the Confederate Government. Precisely the same thing holds good today as between New York and Rotterdam. For an American to sell cotton to Holland is a right neither England nor anyone else can infringe, but when this cotton is sold nominally to Holland and actually

filters through Holland into Germany to be turned into explosives, England may, with every sanction of international law, pronounce the transaction fraudulent and prevent it.

In his report for 1863 the Secretary of the Navy said :

" A flag squadron was established in the Autumn of 1862, and placed under the command of Acting Rear Admiral Wilkes. That officer, by his energy and decision, contributed to break up one of the several lines of illicit traders organized to carry supplies to the rebels ostensibly bound to Matamoras, but with cargoes having a contingent destination to Texas."

" A contingent destination," it is a most admirable phrase.

What the United States did in 1861 and subsequent years with the approval of the American people and Great Britain is now doing, that is seizing cargoes with " a contingent destination," is alleged to be a gross interference with neutral commerce and a violation of international law, inasmuch as it is virtually a blockade of neutral ports, and while a belligerent is permitted to blockade the ports of an enemy he may not blockade the ports of a neutral. But in placing in the prize court merchandise whose ultimate destination is under suspicion, or detaining articles pending proof of ownership, England is no more blockading neutral ports than the United States blockaded the neutral British ports of the West Indies. Bermuda was not blockaded, because that would have been a challenge thrown down to England ; but the Confederacy was under blockade and Federal cruisers, in the proper performance of their duties, were enforcing the blockade by preventing ships, neutral or Confederate, from running the blockade, and in the judgment of the Admiral commanding the squadron that work could be more efficiently done a thousand miles from the coast than ten. If American jurists should now hold that England is blockading the neutral ports of Scandinavia and Holland, then not only does the United States reverse the Supreme Court but the American Government is liable to Great Britain in damages for the vessels and cargoes seized during the Civil War. From this embarrassment there is no appeal.

But what the United States did in 1861 and what England is doing today is this. International law prohibits a neutral from allowing its territory to be used as an enemy base. A neutral may sell to a belligerent, but a neutral must not allow its domain to serve as a base from which a belligerent conducts military operations. In my examination of the de-

cisions of the Supreme Court I have not been able to find that the term "enemy base" was used, but undoubtedly that thought was in the minds of the eminent jurists when they condemned *The Bermuda, The Springbok* and other vessels. The Bahamas and Bermuda had become, in fact, enemy bases, and their character had entirely changed. In the same way today certain neutral countries adjacent to Germany have become an enemy base when by official connivance or through failure to take measures strictly to observe the obligations of neutrality they permit contraband to pass through their ports with Germany as the ultimate destination.

All other considerations apart, self interest and national safety must make the United States think long and earnestly before it gives encouragement to the abandonment of the rule of international law that prohibits a neutral from constituting its territory an enemy base. Suppose the United States should be at war with Mexico, and suppose it should be to the interest of one or more great powers to support Mexico. Improbable as that may appear today, it is no more improbable than two years ago the average American would have declared it was impossible for more than half the world to be at war and thousands of lives and millions of treasure should be sacrificed every day on the field of battle. The great Powers, the allies of Mexico, would have to supply her with munitions and military supplies, and these would be sent in neutral bottoms not to Mexican ports, which the United States would have blockaded, but to one or more of the Central American Republics. We should then see millions of rounds of ammunition, thousands of rifles and machine guns, vast stores of all descriptions poured into these Republics nominally for their own use; and as they were neutral and the goods were the property of neutrals they would be immune from capture. Does anyone believe the United States would permit the setting up of an enemy base? Does anyone question that the American doctrine of ultimate destination and "contingent destination" would not be invoked, and that American cruisers would go out into the Atlantic and the Pacific, even to Europe and Asia if necessary, to capture these supply ships?

A further complaint made against England is that her blockade of Germany is illegal because it does not comply with the rule of international law that a blockade must be impartially enforced against all neutrals. This proves the truth of the old adage that a little knowledge is a dangerous thing. That portion of the coast of Germany bordering on

the North Sea is under blockade, the Baltic coast of Germany is not, therefore it is possible for Scandinavia to carry on commerce with Germany, while the commerce of America, having to pass through the North Sea, runs against the blockade; therefore, again, the essence of equality is absent, and the blockade is really a discrimination against the United States.

Persons who argue in this fashion are undoubtedly honest, but they are betrayed into error by their ignorance. Blockade is a belligerent right, to be exercised by the belligerent as he sees fit, with due regard to the restrictions imposed by the law of nations, and no more subject to the whim or convenience of a neutral than are operations on land. When a blockade is instituted the blockading government is required to issue a proclamation, which prevents neutral ships from pleading ignorance and avoiding the penalty of blockade running. The proclamation states the geographical limits of the blockaded area. It is optional with the blockader whether he shall blockade one or more ports, whether he shall blockade the whole or only a part of the coast, and he may extend or contract the limit during the progress of the war, provided always that the blockade is actual and physical and not simply a declaration. Thus, when the United States declared war on Spain President McKinley, by proclamation of April 22, 1898 declared a blockade of the ports of the north coast of Cuba from Cardenas to Bahia Honda inclusive, and of the port of Cienfuegos on the south coast. That left a great stretch of the coast of the island open. On June 27 the blockade was extended to include all the ports on the south coast from Cape Frances to Cape Cruz, and in Porto Rico only the port of San Juan was declared under blockade. There have been blockades confined to a single port, there have been blockades when certain enemy ports have been specifically exempted from blockade and declared free to neutral commerce. Equality, therefore, as the word is used by international jurists in this connection, does not mean that the advantage conferred on one neutral by geographical relation must be compensated for when another neutral, owing to the accident of geography, is not placed in an equal position as regards the belligerent, but simply means that the blockader may grant no favors to one neutral not given to all. He may not permit the ships of one neutral to enter a blockade port and deny the same privilege to ships of other neutrals, he may not seize contraband under one flag and give it safe conduct when it is covered by another flag. Having been

consistently impartial and regarding all neutrals as entitled to the same treatment, he has done all that is required of him. Great Britain would have complied with every requirement of international law had she proclaimed the North Sea Coast of Germany under blockade and made no attempt to prevent communication with Germany through her Baltic ports. To show that a blockade need not embrace the entire coast but only certain parts I quote from the instruction of Mr. Clayton, when Secretary of State, to the American Minister to Denmark, the " blockade must be confined to particular and specified places."

I have already stated that two mistakes were made by England in the early days of the war. One has been discussed, the other was the vexed question of contraband. Out of consideration for the United States, and in the hope of causing the least financial injury to American interests, the British Government refused to make cotton contraband because the season's crop was then beginning to come to market, and the ban of contraband would have smashed prices and caused acute financial distress. Having as early as September, 1914, urged upon the British Government immediately to place cotton on the contraband list because of its vital importance in the manufacture of explosives, I am naturally disposed to think the Government erred, but the fact that Great Britain was willing to incur this handicap—for it must be remembered the British Government was not ignorant of the benefit to be derived by Germany but made the sacrifice with full knowledge of the consequences—ought once and for all to silence those critics of England who persist in their untruthful statements that England has purposely interfered with American trade and brought great losses to Americans that might have been avoided.

What is included under the head of contraband international jurists have yet to determine. "I apprehend it to be the settled rule of international law that the question of contraband is to be determined by the special circumstances of each case," Mr. Bayard wrote when he was Secretary of State. "Horses, for example," he continued, "would not ordinarily be spoken of as contraband, yet all authorities agree that they may be so regarded when their supply is so essential to a particular belligerent that he cannot carry on operations successfully without them." Here in the last sentence we have perhaps as clear a definition as it is possible to give. Contraband, in brief, is whatever a belligerent needs, and although the word connotes articles of military use or necessity, the classification is much wider. "Printing presses, materials and paper, and

postage stamps, belonging to the enemy, and intended for his immediate use, are contraband," the Supreme Court ruled in *The Bermuda.* In the old days, in those spacious days before steam, when men fought breast to breast, and ships fired their guns through the enemy's ports and the crew swarmed over the sides cutlass in hand, the list of contraband could be easily determined. In a treaty concluded by the United States with Italy as recently as 1871 it is curious to read among the enumerated articles of contraband "swivels, blunderbusses, muskets, fusees, pikes, spears, halberds, matches, balls," all of which might be interesting in a museum of antiquities but would be worthless on a modern battlefield. Contraband cannot be narrowly defined because war no longer being a contest of force but of science, and chemists, physicists, metallagurists, engineers having as much to do with winning battles as generals, what may be an innocent article in peace can be converted into a powerful explosive in war. Take, for example, a thing so harmless as glycerine, which is good alike for the minor annoyance of infants and the old, and is a balm to women who respect their complexions. In Germany today glycerine is not being used to soothe the chafed limbs of babies or to heal the faces of women chapped by the cold, but every ounce is being converted into the manufacture of explosives. Mention lard and it is to think of the frying pan, which is well enough in peace, but today German chemists are transforming lard into glycerine to keep up the supply for the munition maker. Take cotton, about which we have all heard so much. Germany is not offering extravagant prices for the staple to make shirts or socks or sheets, but to make explosives for her big guns, for the torpedoes to be fired from submarines to sink ships. Excluding articles of pure luxury that can be used only for the specific purpose for which they are intended, there is practically nothing that cannot be classed as contraband or turned to military use, either to replace a recognized element or as a substitute.

I have been reliably informed that a short time ago one of the neutral Powers attempted to make a list of contraband and submitted the question to its military experts and scientists. After devoting considerable study to the subject they reported that with the exception of human hair there was not a single element or substance which could not in some way be made to serve a military purpose.

A great deal of honest misunderstanding exists as to the trade rights of neutrals in war, and it is well these misapprehensions should be re-

moved. War does not stop trade, but it introduces two new factors. First, it makes the broad distinction between contraband and noncontraband; second, it imposes certain risks. I shall not burden this article with unnecessary citations, it is sufficient to say that Jefferson, Pickering, Clay, Evarts and Frelinghuysen, when Secretaries of State; Hamilton, when Secretary of the Treasury; President Pierce, in his second annual message to Congress, various Attorney Generals and the Supreme Court have repeatedly affirmed that citizens of the United States have the right to sell contraband to belligerents, and this traffic is not a breach of neutrality; but the Supreme Court has also declared that contraband is always subject to seizure when being conveyed to a belligerent destination, and that an enemy's commerce under neutral disguises has no claim to neutral immunity. The question then, and the only question, is to determine what is contraband, and that must vary from time to time, even from day to day, and, as Secretary Bayard wrote, "be determined by the special circumstances of each case."

It has been charged against England—by the Germans in Germany and the German sympathizers in the United States—that she is guilty of uncivilized warfare in that her blockade serves no military purpose and only kills, by starvation, babies and young children. No one can follow the tortuosity of the German mind. Scarcely a day passes but some important official in Berlin tells the world through the medium of the American press that the British blockade is a failure, that Germany has all the food and everything else she needs, that she cannot be starved into submission; and scarcely a day passes but other officials equally highly placed denounce Great Britain for making war on babies. Until German officials can agree whether they are starving or rioting in abundance the neutral world need not particularly concern itself about charges of brutality; remembering the babies Germany sent to their death beneath the chill waters of the Atlantic; the babies on whom German aeroplanes dropped bombs in England; the babies German soldiers killed in Belgium; the young girls the victims of German lust in France, in Belgium, in Poland; remembering the crimes of which Germany is guilty; remembering all these things, a world heartsick with horror might well say to Germany that as she watches the death throes of her infants the vengeance of the Lord is being exacted. But, for the honor of humanity, the world is not all Prussian. The thought of little children dying because milk is denied them is very terrible, and is still another crime for

which Germany stands indicted at the bar of civilization. England can no more permit milk to go to Germany than she can permit foodstuffs or cotton or explosives; because, among other reasons, milk can be converted into explosives, and the tins in which condensed milk is packed make excellent trench bombs.

It is always the innocent who are the heaviest sufferers from war; it is always the very young and the very old, the sick and the infirm, those who have had nothing to do with bringing on the war and who can take no part in it, who are war's first victims. Germany plunged the world into war, and Germany is now paying the penalty. Germany showed no mercy when she besieged Paris and French babies starved to death; when the French Commander shut up in Strasburg requested that milk be sent in for dying babies his petition was rejected.

Though the mills of God grind slowly, yet they grind exceeding small;
Though with patience He stands waiting, with exactness grinds He all.

I trust I have made the law of blockade clear and the power under which it may be exercised by the sanction of nations. I believe every unprejudiced person will agree that in blockading Germany, in preventing neutrals from violating the law of blockade and providing Germany with the food and other articles she needs to carry on the war, Great Britain instead of having exceeded her legal rights has surrendered many of them, and that for everything she has done she is following the precedents established by the United States during the Civil War, which the Supreme Court of the United States sustained as being in strict conformity with good morals and international law.